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FROM ROMAR

May 26, 1999

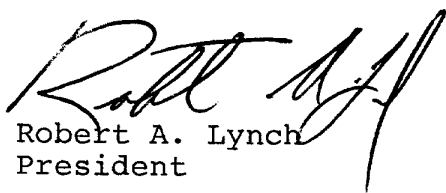
Ms. Magalie Roman Salas  
Office of the Secretary, TW-A306  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Dear Ms. Salas:

Transmitted herewith are the original plus four (4) copies of our company's Formal Comment in MM Docket No. 99-25, the Commission's Notice of Proposed Rule Making toward creation of a Low Power FM Radio Service.

Be advised that the Commission or any interested party to this proceeding may direct questions or comments to the undersigned at the above-referenced address.

Respectfully submitted,

  
Robert A. Lynch  
President

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FORMAL COMMENT

in the matter of

Creation of a Low Power  
Radio Service

MM Docket No. 99-25

Submitted by:

Romar Communications Inc.  
Ithaca, NY

May 1999

## TABLE OF CONTENTS

<u>Topic</u>	<u>Page</u>
<u>SUMMARY:</u> .....	-i-
<u>INTRODUCTION:</u> .....	1
<u>BACKGROUND:</u> .....	3
<u>AM ELIGIBILITY:</u> .....	6
<u>RESIDENCY REQUIREMENTS:</u> .....	9
<u>COMMERCIAL/NON-COMMERCIAL ELIGIBILITY:</u> .....	12
<u>APPLICATION &amp; SELECTION PROCEDURES:</u> .....	12
<u>INTERFERENCE PROTECTION CRITERIA:</u> .....	17
<u>CONTOUR PROTECTION ANALYSIS:</u> .....	21
<u>CHARACTER QUALIFICATION STANDARDS:</u> .....	23
<u>CONCLUSION:</u> .....	24

Before the  
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of:	)	MM Docket No. 99-25
	)	
Creation of a Low Power	)	RM-9208
Radio Service	)	RM-9242
	)	

To: The Commission

SUMMARY

Romar Communications Inc. ("Romar"), of 175 Gray Road, Ithaca, New York 14850, hereby provides a summary of its Formal Comment in the afore-referenced proceeding whereby the Commission seeks to establish a Low Power FM ("LPFM") radio broadcast service. As detailed in the pages that follow, Romar can offer the Commission only cautious, limited and conditional support at this time toward the LPFM initiative. Under the appropriate circumstances, this commenter may in the future seek application for an LPFM license. Nonetheless, in the opinion of the undersigned, Romar's president, a professional broadcast consulting engineer, the Commission's current Notice of Proposed Rule Making ("NPRM") runs the risk of seriously compromising FM broadcast technical standards to the detriment of incumbent FM licensees, while also limiting too narrowly applicant eligibility criteria in some circumstances while expanding them too widely in others.

First and foremost, Romar urges the Commission to rethink its tentative conclusion that no full-power licensee be eligible for an LPFM authorization. Romar recommends LPFM opportunities be extended to locally-based, stand-alone AM broadcasters on an equal footing with other LPFM applicants.

Given the competitive handicaps imposed by market consolidation and the ongoing technical inferiority of most AM receivers, the stand-alone operator could benefit significantly from gaining access to a single FM outlet, even one of reduced power. The opportunity would help advance the Commission's objective of increased diversity by helping preserve the existing diversity offered by the hometown AM broadcaster.

On the other hand, this commenter recommends the Commission establish strict local residency requirements for all LPFM applicants. Only through such a restriction can the agency ensure the LPFM service would truly become a community-based resource. Romar fears that without residency limits, all valuable LPFM authorizations would vanish with the first filing window, most gobbled up by well-financed national organizations possessing the financial clout to outbid local applicants.

As for technical criteria, Romar urges caution. It declines to support, for now, the Commission's proposal to exempt LPFM facilities from second-adjacent interference protection requirements. As a potential compromise, Romar suggests only third-adjacent interference protection be waived. Rather than impose potential interference on second-adjacent full power stations, Romar recommends the Commission expand LPFM allocation opportunities by allowing LPFM applicants to utilize contour protection methodology and/or directional antennas. A strict, spacing-based allocation scheme appears too rigid and restrictive.

Finally, Romar endorses the Commission's proposal to require LPFM applicants to meet the same character qualification requirements as full power licensees. Equity demands nothing less.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:	)	MM Docket No. 99-25
	)	
Creation of a Low Power	)	RM-9208
Radio Service	)	RM-9242
	)	

To: The Commission

FORMAL COMMENT

Romar Communications Inc. ("Romar"), of 175 Gray Road, Ithaca, New York 14850, hereby submits its Formal Comment in the afore-referenced proceeding, the Notice of Proposed Rule Making ("NPRM") in MM Docket No. 99-25, whereby the Commission proposes to establish a low-power FM radio broadcast service. In this submission, Romar, through its president, the undersigned, offers the Commission cautious, limited and conditional support toward the creation of a Low-Power FM ("LPFM") service. However, following detailed review of the NPRM's text, Romar cannot at this time provide the Commission a blanket endorsement of its initiative. Indeed, Romar's support of an LPFM service is far less enthusiastic than it was one year ago when it offered its Formal Comment in RM-9242, the Rulemaking Petition by Roger Skinner, Jr., one of those which prompted the Commission to initiate the instant proceeding. Most particularly, Romar worries the Commission's current LPFM proposal would seriously compromise FM broadcast technical standards to the detriment of incumbent licensees, restrict too narrowly the universe of potential local applicants for an LPFM license, but also open too widely the opportunity for LPFM speculation nationwide.

Given the limits of time and resources, Romar's owners will focus their comments only upon those elements of the Commission's LPFM plan which prompt their greatest concern. In particular, Romar strongly recommends:

1. That the Commission qualify locally-based, stand-alone AM broadcast licensees and permittees to apply for an LPFM authorization on an equal footing with other potential LPFM applicants;
2. That eligibility for LPFM licenses be tightly controlled to require local ownership and discourage national speculation;
3. That both commercial and non-commercial LPFM applicants be allowed to seek licenses in the non-reserved portion of the FM spectrum;
4. That Commission allocation standards for any new LPFM service provide full protection to incumbent FM licensees on co-channel, first-adjacent and second-adjacent channel frequencies, as well as limited grandfathered protection to existing FM translators;
5. That rather than relax interference standards for full-power broadcasters, the Commission expand LPFM allocation opportunities by permitting applicants to utilize contour protection analysis and/or directional antennas, and;
6. That all LPFM applicants be held to the same character qualification standards as full-power broadcasters.

In concept, Romar agrees with the Commission's preliminary decision to divide the LPFM service into primary LP1000 and secondary LP100 categories. This commenter offers no immediate opinion on whether a third "Microradio" category is also needed. Given its own business interests and anticipating the greatest potential for controversy, Romar will direct primary attention to the protected, higher-powered LP1000 classification the Commission proposes. The undersigned stands well aware of potential opposition the LP1000 proposal will face from industry trade groups, including

the National Association of Broadcasters ("NAB") and the New York State Broadcasters Association ("NYSBA"), both probable commenters in this proceeding. Romar sincerely hopes such opposition will be based on valid technical concerns, not protectionist fervor. Member stations of these associations deserve to guard their investments from destructive, unforeseen interference; and the Commission should be sympathetic to their grievance. If not, ill will is certain to intensify between full-power broadcasters and their low-power counterparts who may eventually populate the dial. Any Commission initiative should encourage the two services to exist as healthy competitors, not destructive adversaries.

#### BACKGROUND

On April 24, 1998, in its Formal Comment on the Petition for Rulemaking by Rodger Skinner, Jr. (RM-9242), Romar stated:

"If assigned to appropriate applicants and authorized on sound technical principles, (LPFM) stations could, Romar believes, serve as the most effective vehicle to diversify broadcast ownership in decades."

We continued:

"Current (broadcast station) prices keep established facilities out of reach for all but the very rich. Personal wealth should never be a requirement for access to the First Amendment...Romar believes a new class of lower-powered FM stations assigned to local owner-operators according to strict criteria would enhance the public interest while opening a window of opportunity for the "little guy" to take entrepreneurial risk and experience the American dream."

Romar stands by those statements today; and by reference, we incorporate our comments in RM-9242 into this proceeding. As the Commission and interested parties will note, Romar then, as now, advocated any new LPFM service should be established only under "fully professional standards," and that incumbent full-



power FM broadcasters be accorded complete interference protection under Commission standards. While Romar urged the Commission to restrict LPFM licensing eligibility to those parties whose majority ownership reside within the proposed station's service contour or within the market it serves, our pleading also proposed expansion of LPFM eligibility to licensees of stand-alone AM stations whose owners met the same criteria.

On February 10, 1999, Romar provided Formal Comment in RM-9419, the Rulemaking Petition filed by the American Community AM Broadcasters Association ("ACAMBA"), said Petition proposing the expansion of FM translator licensing opportunities to stand-alone AM broadcasters. Romar supported that initiative, but added:

"Should the Commission for whatever reason dismiss the concept of FM translator use by AM licensees, eligibility of said licensees for LPFM stations might prove a suitable, or even more effective, alternative."

Taking note of the increased financial challenges affecting stand-alone AM broadcasters in a consolidating media marketplace and the ongoing technical handicaps posed by low-fidelity AM receivers, Romar continued:

"Limited FM translator use by AM licensees would serve the public interest by preserving and enhancing diversity of broadcast ownership and enabling hometown, stand-alone AM licensees to more effectively compete with their FM and AM-FM counterparts."

While the translator eligibility proposals of RM-9419 are not incorporated within the instant proceeding, Romar believes the two initiatives stand as close cousins toward preserving the AM service and encouraging ownership diversity. Again, we incorporate our Formal Comment in RM-9419 into this proceeding by reference.

The author of this Comment, Romar's president, provides the Commission a dual perspective. In a series of applications since 1987, Romar Communications Inc. has sought to establish a locally-owned AM broadcast station in its community of choice, Lansing, New York. Its current filing remains before Commission review, awaiting implementation of processing procedures under MM Docket No. 98-11. Both Romar's principals, the undersigned and his sister Marcia, the firm's vice-president, have resided in the local community for more than 25 years, and each possesses broadcast experience in the Lansing/Ithaca market. As such, each values the importance of community-based radio that puts the public interest first; and each views the establishment of their new station as a lifetime career goal.

Additionally, Mr. Lynch has served professionally since 1987 as a broadcast consulting engineer with the firm Independent Broadcast Consultants, Inc., Trumansburg, New York. He has prepared numerous engineering applications for clients nationwide, and is thoroughly familiar with AM and FM broadcast allocation standards. He is also fully aware of the technical challenges facing modern broadcasting in the era of increased spectrum utilization and diminished regulatory control. His opinions expressed herein do not necessarily carry the endorsement of Independent Broadcast Consultants, Inc., nor any of its clients. Nonetheless, the writer's professional activities may lend to this Comment a degree of engineering objectivity that the Commission will find helpful. The experience also accords this commenter insight into the full-power broadcaster's point of view.

AM ELIGIBILITY

In the NPRM for this proceeding (§ 57), the Commission tentatively concludes:

"...that strict local and cross-ownership restrictions would be appropriate for the low power radio service... As a corollary to this proposal, we are not proposing to give an application preference to AM station licensees...We do seek further comment on this issue."

Romar Communications Inc. respectfully requests the Commission rethink its position and offer AM licensees and permittees not a preference, but merely an opportunity to compete with other applicants on an equal footing for an LPFM license. Further, we oppose any requirement that AM licensee applicants divest of their AM holdings as a condition for securing an LPFM authorization. We believe the public interest warrants allowing hometown, stand-alone AM broadcasters a low power FM outlet under strictly controlled criteria.

In its introductory paragraph to this NPRM, the Commission states:

"In creating these new classes of (LPFM) stations, our goals are to address unmet needs for community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and promote additional diversity in radio voices and program services."

Romar maintains that by including stand-alone AM broadcasters among eligible LPFM applicants, the Commission would not only expand the roster of divergent broadcast voices, but also help preserve the diversity that already exists.

It's an unfortunate fact of 1990's radio that the stand-alone AM broadcaster has become a dying breed. Faced

with intense competition from AM-FM conglomerates in their home markets and the ongoing inferior technical standards of most AM receivers, stand-alone AM operators nationwide have been forced to sell their properties to competing duopolies, shrink staffs and programming budgets, or turn in their licenses. The impact of AM operators' bankruptcies or forced retirements has been to deny individual markets seasoned, community-conscious media leadership. Within the past 15 years in Romar's own market, Tompkins County, NY, financial necessity has forced the sale of the last two stand-alone AM stations, WTKO and WPIE. Today, both are run by multi-station groups and offer little local programming. While larger, more diversified operators often possess beneficial economies of scale or the flexibility to offer niche formats, ownership diversity is always compromised when an independent owner is forced to sell. Unless one owns the market's "heritage" AM, or has secured the "Rush Limbaugh" or "Dr. Laura" affiliation, the stand-alone AM operator is usually confined to the bottom of the ratings heap, with inadequate cash flow to purchase a companion FM at today's station prices. By extending LPFM ownership opportunities to qualifying AM licensees, the Commission could do its part toward aiding a deserving, yet troubled, broadcast service.

To avoid abuse of the AM eligibility privilege by AM-FM chains or national speculators, Romar proposes LPFM opportunities be accorded AM licensees on the basis of strict criteria:

1. No qualifying AM licensee could hold an attributable ownership interest in an FM broadcast station, whether in the pertinent AM station's market or any other;

2. No qualifying AM licensee could own more than two (2) AM stations (either daytime or full-time) in the pertinent market, nor more than five (5) AM stations nationally;
3. AM eligibility would be extended only to those operators possessing majority ownership residing either within the local AM station's 0.5 mV/m service contour, the proposed LPFM station's 60 dBu service contour, or the pertinent "market" as defined by the Commission for duopoly analysis;
4. Should an otherwise-qualifying AM licensee eventually sell to, or combine with, an ineligible LPFM applicant (such as a firm holding a full power FM license), the LPFM license would not transfer to the new owner, but rather be retained by the seller, sold to a qualifying third party, or be returned to the Commission for cancellation.

In its NPRM, the Commission proposes to give low power licensees discretion to determine the mix of local and non-local programming (§ 68). However, the Commission adds:

"...in order to promote new broadcast voices, we propose that an LPFM station not be permitted to operate as a translator, retransmitting the programming of a full-power station."

Given the technical handicaps facing the AM industry, Romar proposes the Commission grant eligible AM licensees limited flexibility to simulcast AM and LPFM programs. To ensure optimal utilization of scarce LPFM frequencies, we suggest the Commission allow no more than 50 per cent AM-FM duplication (alternately 25 per cent), thereby allowing the AM operator reasonable economies in the presentation of news, public affairs, and other labor-intensive offerings. In our view, an LPFM station should serve as a complement, not as a substitute, for a licensee's AM station. The LPFM component could, for example, direct a music-intensive format to the community of license, while the AM station delivers talk programming or serves a larger regional area. For this reason, Romar would oppose any

Commission initiative to require divestiture of an AM license as a condition to qualify for an LPFM assignment.

Romar directs the Commission and all interested parties to its Comment in RM-9419 for a discussion of potential AM licensee eligibility for FM broadcast translators.

#### RESIDENCY REQUIREMENTS

Repeated frequently throughout the NPRM is the Commission's intent to establish a low power radio service that fosters community-based broadcasting and encourages diverse, local ownership. Nonetheless, while acknowledging many commenters in prior rulemaking petitions support local residency or "integration" requirements, the Commission tentatively concludes (§ 61) that no such restrictions are necessary. Instead, the Commission argues:

"Regarding LP1000 stations, we have long recognized that full power stations require neither local residency nor integration between ownership and management to access and address local needs and interests...(We) do not believe any benefits that might accrue from such restrictions would be sufficient to warrant the proof and enforcement efforts that they would entail."

Romar respectfully disagrees. In proposing relaxed interference protection standards between LPFM stations and their second- or third-adjacent channel full power counterparts, the Commission laments the lack of otherwise-available LPFM frequencies in urban markets. Though never stated in so many words, the agency essentially proposes compromising FM technical rules to accomplish what a majority sense is a loftier goal, namely ownership diversity. Romar takes no stand in that philosophical debate. However, we do stress that if the Commission assigns diversity and localism such overwhelming importance, it should take every

step possible to assign what few LPFM allocations become available to truly local entities.

Let no one be misled. Under the Commission's present plan, LPFM (especially LP1000) stations will be gobbled up fast. Aided by electronic filing procedures, no national ownership limits, and an applicant-friendly, Commission-aided database, well-financed national corporations, political groups and ministries could shop on-line for the choicest LPFM opportunities, file as many applications as they choose, and then reach into their deep pockets to outbid local applicants at auction. Once again, a golden opportunity for local radio would be lost. With no limits proposed on satellite or network programming, such chain stations might never offer a single local voice. Without reasonable restrictions on local residency (which inherently carry with them national ownership caps), Romar predicts virtually every LP1000 station in every populated market will be claimed by the close of the first filing window. Nothing would be left for others who may come forth later.

In its Formal Comment in RM-9242 one year ago, Romar proposed the following eligibility limitations:

"To ensure true community-based control, Romar proposes at least a voting majority of ownership reside within either the (LPFM) station's 60 dBu / 1 mv/m coverage contour or within the station's "market" as defined either by Arbitron or by the Commission's overlapping contour method. The Commission may wish to consider requiring 100% ownership within the market boundaries. No other FM broadcast licensee within that market, nor that licensee's stockholders or employees, would be allowed to hold an (LPFM) license. Licensees of stand-alone AM broadcast stations in the market would be eligible for an (LPFM) license...Local marketing agreements or time brokerage arrangements between the (LPFM) station and those otherwise ineligible broadcast

licensees in the market would be prohibited. Assignment of the (LPFM) license could only occur to parties which would qualify for an (LPFM) station were it a new facility. If no suitable buyer could be found, the Commission would be entitled to cancel the (LPFM) license."

Romar welcomes the Commission's tentative decision to adopt those portions of its recommendation as they pertain to other FM broadcast licensees (see § 57). However, we believe a local residency requirement for at least a majority of station ownership would serve as an integral element toward assuring that hometown, entry-level entrepreneurs or community organizations stand a fair chance to secure LPFM licenses. Romar discounts Commission fears that a residency requirement would impose a regulatory burden. In keeping with the streamlined application procedures embodied in MM Docket 98-43, only a certification of local residency would be required for submission. False representations found during random enforcement would result in fines or license forfeiture.

While this commenter would also favor an "integration" standard requiring owner involvement in the LPFM station's daily management, we acknowledge court cases cited by the Commission may make such a requirement legally difficult. And should the Commission reject Romar's recommendation for a local residency requirement, we would support an alternative ownership cap of no more than five (5) stations nationally in the LPFM service (LP1000 and LP100 stations combined.)



COMMERCIAL/NON-COMMERCIAL ELIGIBILITY

In its NPRM (§ 19 and 69), the Commission seeks comment on whether proposed new LP1000 and LP100 stations should be eligible to operate either commercially or non-commercially, and whether profit-oriented entities should be awarded LPFM licenses. As a potential LPFM applicant itself, Romar opposes any effort to restrict LPFM licensing in the spectrum's non-reserved portion to non-commercial applicants. It has no quarrel with imposing such a limitation in the reserved portion of spectrum, channels 201 through 220.

Some may argue that LPFM stations, even those operating at 1000 watts, would prove too small to sustain support through advertising revenues. However, Romar believes that sort of question can best be answered in the marketplace. Should a commercial LPFM broadcaster fail, another applicant, either commercial or non-commercial, could eventually take its place. Furthermore, Romar agrees with the Commission's suggestion that advertising sales could prove helpful in financing LPFM operations. And we disagree with those who have suggested that only a non-commercial broadcaster can offer so-called "quality" programming.

APPLICATION & SELECTION PROCEDURES

Under tentative procedures outlined in the NPRM (§ 91-108), all LPFM applications would be filed electronically, preferably during brief filing windows, or alternatively on a first-come, first serve basis. Mutually exclusive applications for commercial stations received during filing windows would be

resolved through auction. A user-friendly Commission program is proposed to help potential filers avoid mutual exclusivity, perhaps even help them write their own applications.

First, Romar cautions that the electronic filing system has yet to be tested in the aural broadcast service. Under the new rules adopted with MM Docket No. 98-43, electronic filing for full power stations is scheduled to begin later this year. Together with that Docket's "streamlined" (some would say, "dumbed-down") documentation requirements, we fear the conversion to electronic filing will pose unexpected difficulties. Given the Commission's implicit suggestion that LPFM applications will be even more cursory, we fear both a lack of applicant accountability and an absence of vital information required to enable agency and third-party evaluation of a proposal's impact.

The NPRM fails to address how the Commission intends to prevent frivolous or fraudulent applications. Would aliens, children, or other unqualified parties be able to request stations via "e-mail," thereby clogging the Commission's database and discouraging bona-fide applicants? With paper filings, an applicant's signature provides a legally binding commitment. Barring the use of "electronic pens," unavailable to many with computer access, what comparable certification would be imposed on electronic filers? And should filing fees be required, how would such fees be assessed and collected? Without a thorough engineering study, how could other licensees, especially full power stations, evaluate an LPFM proposal for potential interference? The NPRM addresses none of these questions.

In terms of Commission assistance to prospective LPFM applicants, the NPRM states (§95):

"With respect to...mutually exclusive applications, we could attempt to devise a system whereby all applications filed during a particular window are analyzed as a batch, with the resulting mutually exclusive applications identified and posted on a web page. As a further benefit, even if pending applications cannot be instantaneously added to the data base and available for comparison, an applicant would not have to hire an engineer to determine which frequencies were available based on existing authorizations. Moreover, the filing system could also be designed to assist applicants in determining HAAT or appropriate derating of permissible transmit power. This could be particularly important for applicants that might not otherwise have the finances to enter broadcasting."

While we applaud the Commission for its admirable intentions, Romar offers several observations. First, from the standpoint of a company whose two owners have invested tens of thousands of dollars plus countless hours of "sweat equity" toward technical studies on their own applications, Romar bristles at the prospect of taxpayer-funded personnel and resources being assigned to help engineer LPFM filings. Secondly, we question the propriety of Commission staff becoming de-facto engineering advocates for lazy or overly cost conscious applicants. In the undersigned's opinion, an unskilled applicant serving as his own engineer (even with Commission assistance) is akin to performing surgery without a medical license. Who will ascertain correct site coordinates? Who will verify site elevations, antenna HAAT, or calculate service contours? Any serious applicant will invest the time and finances to do his homework before he files with the Commission, not during or afterward. And any such applicant knows preliminary engineering is but a small proportion of the investment required to build and operate a station.

Finally, there stands the question of whether Commission procedures could actually make LPFM filings too easy. Romar believes any serious applicant should be required to think long and hard about a particular assignment in a given community before submitting a proposal. Especially should the Commission open LPFM opportunities to those without local residency, steps should be taken to avoid parties from filing on a whim, or "piling on" with competing applications once someone else's proposal is posted on the web page. For that reason, Romar recommends no LPFM requests be posted on the Commission's internet site until after a given LPFM filing window is closed; and that any attempt to resolve mutual exclusivity also await that window's closing.

How, then, should the Commission receive and process applications for any new LPFM service? Romar recommends the agency be guided by the rules currently employed for full power FM applicants, or those soon to be imposed under MM Dockets 98-43 (application streamlining), 98-93 (streamlining of radio technical rules) and 97-234 (competitive bidding procedures). For reasons of equity and sound engineering practice, any LP1000 application should be as thorough as that demanded for its full-power counterpart. And any LP100 filing should be at least as detailed as that required for a secondary FM translator. Therefore, as established by Docket 97-234, an LPFM applicant would file electronically a Short Form 175 during a designated window period. Once any mutual exclusivity were resolved, a Long Form application would be required (FCC Form 301 for commercial stations; Form 340 for non-commercial entities.) Applicants would be required to establish Public Inspection Files containing

paper copies of their submissions, even those filed by computer. Public notice requirements would be imposed. Commercial entities would be assessed filing fees comparable with those for full power FM applicants (currently \$2,600 per application.) All prospective licensees would be required to certify their legal and financial qualifications at the time of their initial application. Every technical submission or certification required of full power FM applicants under the new streamlined rules would be demanded of an LPFM prospect.

This commenter is no fan of broadcast auctions. We recommended against such auctions in our RM-9242 comments last year. In our opinion, using the highest bid to assign scarce spectrum elevates personal wealth above human worth, and would only serve to discourage financially weaker entities from filing applications. Our preference is for the Commission to return to the discarded practice of comparative hearings; but we realize the Commission shows no interest of doing so. What's more, as stated in the NPRM (§ 104 ), the Balanced Budget Act of 1997 may mandate auctions as the only legal means for resolving mutual exclusivity among commercial applicants. Congress appears to have spoken; and we are prepared to live with that fact.

The only apparent alternative outlined in the NPRM would be for the Commission to accept LPFM filings on a first-come, first-serve basis, thereby eliminating the prospect of mutual exclusivity. While tempting in theory, first-come, first-serve processing could impose its own inequities. Under this scheme, Romar would predict a "land rush" business during

the first few hours of the first filing day. As the Commission acknowledges (§ 99-102), those with slower, less-accessible computer systems may be placed at a disadvantage. And should no local residency restriction be imposed on applicants, those in remote, rural regions of the nation with slower internet connections could be shut out of the process. For the sake of consistency with the procedures established for other broadcast services, the use of filing windows and auctions may stand as the best of a number of bad alternatives. But to ease the crush of applications no matter what filing method the Commission selects, LPFM opportunities could be opened on a staggered basis, region by region. Given the proposed LPFM stations' low power, no section of the nation would likely be placed at a serious disadvantage by this procedure.

#### INTERFERENCE PROTECTION CRITERIA

We now address what, no doubt, has and will become the most contentious issue dividing LPFM supporters and opponents, namely whether and to what extent FM interference protection standards should be relaxed for low power licensees. Given foremost attention is whether low power stations should be required to protect their full power counterparts on second- and third-adjacent channels. In its NPRM, the Commission's majority seems inclined to agree with LPFM advocates that second- and third-adjacent protection is unnecessary. Full power broadcasters and their trade groups have already indicated in the press that they will staunchly defend their right to full protection. At the outset of this Comment, Romar recommended that any LPFM allocation plan

provide full protection to incumbent FM licensees on co-channel, first-adjacent, and second-adjacent channel frequencies.

Retention of this standard would both preserve existing investments and foster at least the first elements of a collegial relationship between low power and full power broadcasters.

Romar will defer to those with greater technical expertise and better research data to determine what impact, if any, potential LPFM second- or third-adjacent channel interference would have upon existing full power stations or the future development of In-band, On-Channel ("IBOC) digital broadcasting. However, as a potential compromise, this commenter suggests the Commission consider lifting third-adjacent interference protection requirements for LPFM stations, while preserving, at least for now, requirements for second-adjacent protection of full power facilities. The Commission could then revisit the second-adjacent protection issue five-to-ten years hence, once the standard's impact on LPFM assignment opportunities is better known and IBOC technology is more fully developed. By so doing, the agency would err on the side of caution. Thirty years in the broadcast industry has taught the undersigned that rescinding an ill-conceived rule is nearly impossible when new stations were created as that rule's result.

Rather than eroding the interference standards for full power stations, the Commission would be wiser to relax protection rules only as they affect the LPFM licensee. To the point, Romar proposes that LP1000, LP100 and potential microradio stations be allowed and conditioned to receive interference from co-channel

or adjacent channel full power stations. (However, these LPFM facilities could not cause interference to full power entities.) Second-adjacent channel interference requirements between LPFM stations, or between LPFM stations and secondary services such as FM translators, would also be eliminated. A newly-created LPFM assignment could receive co-channel or adjacent channel interference from earlier-authorized LPFM or translator stations, but could not impose new interference on the pre-existing LPFM operation. Minimum separation requirements and potential contour protection standards for LPFM stations would be adjusted accordingly. Reference to APPENDIX B of the NPRM reveals that elimination of LPFM standards for received interference would expand the allocation opportunities for LPFM licensing. For example, an LP1000 station co-channel with a Class B station (a common prospective circumstance here in the Northeast) would only need 137 kilometers site separation to protect the Class B station from interference, but would require as much as 152 kilometers separation were the LPFM also to be protected. With Class C2, C1 and C full power stations, the difference is even more profound. Given existing spectrum congestion in populated regions, the reduced separations could expand by geometric proportions the number of new LPFM stations the band can accommodate. For "Johnny-come-lately" LPFM licensees, better to receive a little interference than have no station at all. As will be discussed in the following section, Romar also recommends use of § 73.215 contour protection analysis to additionally expand LPFM opportunities.



Romar concurs with the Commission's preliminary conclusion that LP1000 stations should be accorded primary frequency use status (§ 29), while LP100 (and microradio) stations be relegated to secondary status. However, based on his professional experience, the undersigned cautions primary status for LP1000 facilities could pose unexpected problems for licensed FM translators and Class D stations already in existence. Class D and translator licensees could not have foreseen the LPFM initiative; and many such stations would be displaced from the spectrum were LP1000 operators empowered to order their removal. Romar's president has, himself, engineered several such translators in the past decade which could, depending on this proceeding's outcome, be "bounced" from what their owners thought was clean spectrum too tiny to be claimed by a Class A station. The NPRM seeks comment on whether pre-existing translator or booster stations should receive "grandfathered" interference protection from LP1000 facilities. In fairness to translator operators who invested in good faith, we respectfully request such grandfathering be considered. At the least, the LPFM station might not be allowed to displace the pre-existing translator, though the two facilities might be conditioned to accept each other's interference; and any potential interference on second- or third-adjacent channels could be ignored.

One additional unexpected consequence of the LPFM rulemaking could be its impact on future full power allocation opportunities. Indeed, we predict the proliferation of new, protected LP1000 stations would quickly exhaust any remaining, albeit limited, spectrum available for full power Class A

allotments even in secondary markets. Senior engineers may recall the "preclusion studies" once required to justify a new assignment. Romar suggests the Commission may wish to limit LP1000 opportunities to only those channels where spacing criteria would preclude a full power station on the same or an adjacent channel. The agency should also weigh the relative public interest value of licensing one or more LP1000 stations, versus the full power facility they would displace.

#### CONTOUR PROTECTION ANALYSIS

To expand allocation opportunities for low power FM stations, Romar strongly recommends the Commission allow LPFM applicants to employ contour protection analysis and/or directional antennas. As such, we disagree with the Commission's tentative conclusions in the NPRM (§ 40):

"If we were to create one or more classes of low power radio service, we would expect to receive a very large volume of applications. The expeditious authorization of such service requires a simple, yet effective, means of controlling interference among stations...We recognize that an approach based on distance separations could result in fewer LPFM stations and that additional stations could be "squeezed in" if a contour overlap methodology were employed. However, as the Commission learned from implementing the low power television service, the contour overlap approach is resource intensive and requires, among other things, substantial preparation in advance of receiving applications, including the writing of complex computer programs and preparation of several data bases. A contour protection-based licensing system could also impose substantial additional processing burdens on the staff. We are concerned, therefore, that adoption of this approach could substantially delay the authorization of low power radio service and place a heavy burden on small LPFM applicants."

A footnote to the referenced paragraph states:

"For example, a contour overlap approach would involve terrain data and computations of antenna height above

average terrain. It would also require applicants to submit data on directional antenna patterns, which the Commission would enter into a directional antenna data base,"

First, in terms of applicant burdens, Romar proposes only that contour protection analysis be made permissive, not mandatory. While our Comment last year in RM-9242 mentioned contour protection as the preferred allocation standard, we have no quarrel with the Commission's establishment of minimum separation distances as an engineering starting point. Our initial review of the proposed minimum separations listed in APPENDIX B of the NPRM indicates such spacings would prove quite satisfactory. Indeed, most LPFM applicants would probably request their assignments solely on the basis of fully-spaced facilities. However, Romar believes fairness dictates low power applicants be accorded the same opportunities as their full power counterparts to resolve any short-spacings through the contour protection rules of § 73.215. Likewise, LPFM applicants should be permitted to request directional antennas in full compliance with the rules of § 73.316.

Since the rules and methodology for contour protection in the low power and full power FM services would be nearly identical, Romar questions the Commission's suggestion that new "complex computer programs" would need to be written. Computations of average terrain and antenna HAAT should be required under any assignment procedure to ensure proposed facilities do not exceed allowed maximums. While review of contour-based or directional FM proposals may consume somewhat more staff time, commercial LPFM applicants should bear some of the expense

through filing fees. Indeed, the Commission may wish to assess a somewhat higher processing fee for LPFM applicants requesting contour analysis. What's more, the Commission's expected conversion to its streamlined, certification-intensive review procedures under MM Docket 98-43 should ease the burdens on staff.

As a practical matter, Romar suspects most contour-based LPFM applications will be filed by the more sophisticated commercial LP1000 aspirants. Such filings would help further Commission goals of seeking maximum utilization of spectrum and providing as many LPFM opportunities as possible. Our informal analysis suggests that in regions with varied terrain, such as in our area of upstate New York, LPFM opportunities could double or even triple were contour protection analysis permitted. Perhaps, initially, the Commission might limit contour-based applications to those commercial entities whose filing fees would help compensate their review. But in any circumstance, expansion of LPFM opportunities through contour protection would appear far preferable to the alternative of waiving second-adjacent protection requirements.

#### CHARACTER QUALIFICATION STANDARDS

As with any public trustee, a broadcaster's character should stand as his or her most essential attribute. Therefore, Romar strongly supports the Commission's tentative conclusion (§ 64) to apply the same character qualification requirements to low power broadcasters as to those who hold full power licenses. Accordingly, we would oppose the award of LPFM

authorizations to those convicted of violating federal law or persistently defying Commission rules and policies regarding unlicensed radio operation. Any illegal operator whose actions have resulted in court-sanctioned enforcement, including equipment seizure, monetary forfeitures or criminal penalties, should be presumed unqualified for an LPFM license unless he or she can convince Commission staff otherwise. The only exemption from this tough policy should be those who promptly and permanently cease illegal broadcasting following their initial complaint or citation by Commission staff.

For nearly two decades, Romar's owners have pursued with great patience their applications for a first radio station. Never once has either given the slightest consideration to "pirate" broadcasting. We believe in playing by the rules, and expect others to do likewise. We — and we suspect many other legitimate applicants — would be offended should the Commission's rules authorize a pirate broadcaster's shutdown one day, only to grant him an LPFM license the next.

#### CONCLUSION

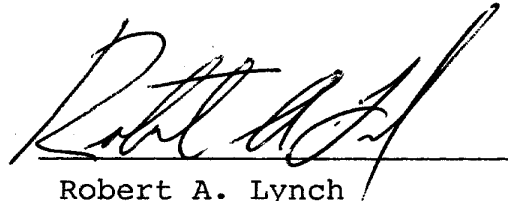
If engineered intelligently and assigned to the most worthy local applicants, LPFM stations could significantly expand broadcast ownership opportunities without producing adverse impact on full power licensees. Indeed, under the proper regulatory framework, Romar would consider filing its own LPFM application to complement that of its pending AM proposal. But the Commission should not act in haste. Members should think long and hard before they jettison proven technical standards or establish overly simplified application procedures

which produce unintended consequences. Issues raised in this proceeding may warrant further opportunities for comment. And as detailed in previous paragraphs, the NPRM could benefit from substantial revision prior to adoption.

Radio is serious business. And the regulatory changes proposed by this docket could substantially reshape the FM landscape. As it implements these revisions, the Commission should do the job right the first time. Rules should be crafted that prevent low power and full power FM licensees from sharing the spectrum as adversaries. Likewise, the Commission should acknowledge the benefits which may accrue from LPFM ownership by qualified AM licensees. Filing rules must be established which encourage localism and discourage speculation. And above all, the public interest must be respected. Romar Communications Inc. trusts its opinions will be carefully weighed as the Commission works to accomplish its objectives.

Respectfully submitted,

May 26, 1999

A handwritten signature in dark ink, appearing to read "Robert A. Lynch", is written over a horizontal line.

Robert A. Lynch  
President  
Romar Communications Inc.